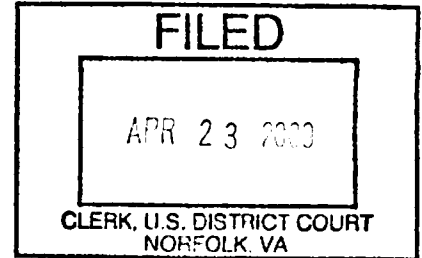


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



TERRENCE M. EDWARDS,

Petitioner,

v.

2:08CV432

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on October 7, 2004, in the Circuit Court for the City of Norfolk, Virginia, for first degree murder and use of a firearm in the commission of a felony. As a result of the convictions, petitioner was sentenced to life plus three years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on March 23, 2009. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received from petitioner on April 2, 2009, objections to the report.


The Court, having reviewed the record and examined the objections filed by the petitioner and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate

Judge. Therefore, it is ORDERED that the petition be DENIED and DISMISSED on the merits and that judgment be entered in respondent's favor.

To the extent the petitioner objects to the Magistrate Judge's finding that trial counsel was not ineffective for failing to call Dominique Kirk as a witness, the objection is without merit. At the time of petitioner's trial, Kirk was underage, gave conflicting statements, was kept from testifying at one point because of her mother's objections, and when ultimately called, she asserted her Fifth Amendment right to not testify. Counsel made an appropriate tactical decision not to call Kirk in the face of predictable unreliability. Counsel's decision was reasonable, in the context of appropriate behavior by attorneys, and his decision did not prejudice petitioner.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for the respondent.

/s/
Rebecca Beach Smith
United States District Judge 
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

April 23, 2009